IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11671 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXTRUSION PROCESSES LTD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11671 of 1994

Mr. K.B.Nayak for M/S TRIVEDI & GUPTA for Petitioner No. 1-2

Mr. M.K. Patel, AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/10/2002

ORAL JUDGEMENT

Heard learned advocate Mr. K.B.Nayakfor the petitioner and Mr.M.K.Patel, learned AGP for the respondent No.1. Notice of rule issued by this court has been served upon the respondent NO.2 and 3 but they have not appeared before this court either in person or through any advocate and, therefore, the matter has been taken up for final hearing in their absence.

Industrial Dispute was raised by the employer under the provisions of the Industrial Disputes Act, 1947. Thereafter, conciliation proceedings were initiated by the Conciliation Officer, Baroda and there was no settlement between the parties and, therefore, failure report was submitted by the conciliation officer under section 12 of the I.D. Act, 1947. Thereafter, under section 12(5) of the I.D. Act, 1947, appropriate Government has considered the failure report submitted by the conciliation officer and decided to refer the matter for adjudication to the concerned tribunal or not. Thereafter, the appropriate Government passed order on 9th August, 1994 and rejected the reference in respect of the service allowance, increment, paid holiday and LTC. The reasons were given by the appropriate Government that if such dispute is referred to the tribunal for adjudication, it will adversely affect the interest of the workers. The appropriate Government referred the matter in respect of the dispute raised by the petitioner that if the workmen remained present on each day of each month, then, whether they are entitled for the presence bonus in salary of one day or not and on such bonus, the workmen are not entitled for the amount of PF,Bonus and gratuity etc.

Learned advocate Mr.Nayak appearing for the petitioner has submitted that the petitioner has raised industrial dispute by certain charter of demand to respondent NO. 3 by letter dated 17th July,1992; in all five demands were raised by the employer and copy was sent to the respondent no.3 and thereafter conciliation proceedings were initiated and both the parties filed necessary replies before the conciliation officer. He has further submitted that only Demand No. B at page 28 has been referred to for adjudication and rest of the demands were not referred to for adjudication. He has submitted that the appropriate Government has no power to adjudicate the dispute on merits. He has submitted that looking to the reasons given by the appropriate Government, it amounts to decision on merits because the appropriate Government has come to the conclusion that if such dispute will be referred for adjudication, it will adversely affect the interest of the workmen. He has submitted that the appropriate Government has no power to adjudicate the dispute whether it is raised by the employer or the employee.

On the other hand, learned AGP Mr. M.K. Patel has submitted that it is not an ordinary demand raised by the workmen but it is a special case wherein dispute has been raised by the employer and, therefore, if the

employer wants any change in the existing conditions of service by raising dispute, then, the employer shall have to follow the proper procedure prescribed under the I.D. Act, by issuing 9A notice to the union and the workmen concerned. He has submitted that instead of that, employer has raised industrial dispute and, therefore, if any dispute raised by the employer is having adverse effect or impact upon the existing service conditions of the workman, the appropriate authority is authorized in not referring the said dispute for adjudication to the concerned labour court or the tribunal as the case may be. In the instant case, according to his submissions, the dispute raised by the employer was having adverse effect on the service conditions of the workmen and, therefore, the appropriate Government was justified in not referring the said dispute to the concerned labour court or the tribunal.

I have considered the submissions made by the learned advocates for the parties. I have also considered the order made by the appropriate Government which is under challenge in this petition. The appropriate Government is having powers under section 10(1) of the I.D.Act,1947 to refer or not to refer the industrial dispute raised before it by the employer or the employee. According to my view, the principles applicable in both the cases are same. Law on this point is settled that if any industrial dispute is raised by the workman or employer, then, the authority concerned has to consider whether the industrial dispute is existing or apprehended or not and if the industrial dispute is existing or apprehended, then, appropriate Government has to refer such dispute to the labour court concerned or the industrial tribunal as the case may be. This is the limited scope enjoyed by the authority concerned while referring the matter and that the authority has no power to examine the industrial dispute on merits. That aspect has been clarified by the apex court in case of TELCO Convoy Drivers Mazdoor Sangh and another versus State of Bihar and others, reported in AIR 1989 SC 1565. Therefore, considering the law laid down by the apex court in case of TELCO (supra), if any industrial dispute has been raised by the employer, then, the authority shall have to consider whether the industrial dispute is existing or apprehended or not between the parties and if the industrial dispute is existing or apprehended between the parties, then, the appropriate Government has no power or authority in law to adjudicate or to decide the lis between the parties while exercising the powers under section 10 of the Industrial Disputes Act, 1947. Considering the reasons

given by the appropriate Government at page 22 for not referring the matter for adjudication as it will adversely affect the interest of the workmen, according to my opinion, it amounts to adjudication of the dispute on merits which is beyond the scope of the appropriate Government and, therefore, according to this Court's opinion, said order dated 9th August, 1994 is without jurisdiction and beyond the scope of section 10 (1) of the Industrial Disputes Act,1947 and, therefore, same is required to be quashed and set aside.

In the result, this petition is allowed. Order passed by the Labour Commissioner, respondent NO.2 herein dated 9th August, 1994 which is at page 21 and 22 of the petition (Annexure-A) is hereby quashed and set aside and respondent NO.2 is directed to reconsider the matter in accordance with law and pass appropriate order within three months from the date of receipt of copy of this order. With these observations and directions, this petition is disposed of. Rule is made absolute accordingly with no order as to costs.

16.10.2002. (H.K. Rathod,J.)

Vyas